of the said land without interruption. From the time she went into occupation she was the equitable owner of the said land. What is required now is to clothe the equitable estate with a legal title. She is entitled to invoke the equitable relief of specific performance. In my opinion the case of *Munah* v. *Fatimah*[2] is a useful analogy. She is also entitled to rely upon her possession of the title deed as a reasonably sufficient protection.

Appeal dismissed.

Solicitors: *Karpal Singh, Wong & Co.; Jayadeva & Zahir.*

PUBLIC PROSECUTOR v. RENGASAMY

[A.Cr.J. (Wan Hamzah J.) May 3, 1974]
[Ipoh — Criminal Appeal No. 47 of 1972]

Evidence Act, ss. 62 and 63 — Carbon copies of cash books — Whether primary or secondary evidence — Charge of criminal breach of trust — Proof of misappropriation — Penal Code s. 409.

The respondent was charged with committing three offences under section 409 of the Penal Code. In the lower court he was acquitted and discharged without his defence being called. According to the statement of grounds of decision of the learned Sessions Court President, the reason for not calling for the defence was that he held that the analysis cash books used in Government Departments for the purpose of recording cash receipts were secondary evidence falling under section 63(b) of the Evidence Act.

The ground submitted by the respondent in the course of this appeal was that there was no evidence of loss to the Government of the sums stated in the charges and alleged to be entrusted to the respondent and therefore the prosecution had failed to prove misappropriation.

Held, dismissing the appeal: (1) carbon copies of the analysis cash books are not secondary evidence under section 63(b) of the Evidence Act as they are documents made by one and the same uniform process as the top copies and therefore they are admissible as primary evidence under section 62;

(2) in the circumstances of this case the prosecution had failed to prove misappropriation.

CRIMINAL APPEAL.

Gunn Chit Tuan (Senior Federal Counsel) for the appellant.

Edgar Joseph Jr. (*S. Thevinthiran* with him) for the respondent.

Wan Hamzah J.: The respondent was tried in the Sessions Court at Ipoh on the following charges: —

"First Charge:

That you between 28th and 29th August, 1969, at the District Police Headquarters, Ipoh, in the District of Kinta, in the State of Perak, being a public servant, namely, Acting Chief Clerk in the office of the District Police Headquarters, Ipoh, and in such capacity, being entrusted with certain property, to wit, cash $229.21 cents, the property of the Royal Malaysia Police, committed criminal breach of trust in respect of the said property and that you have thereby committed an offence punishable under section 409 of the Penal Code.

Second Charge:

That you between 2nd and 3rd September, 1969, at District Police Headquarters, Ipoh, in the District of Kinta, in the state of Perak, being a public servant, namely, Acting Chief Clerk in the office of the District Police Headquarters, Ipoh, and in such capacity, being entrusted with certain property, to wit, cash $47.44 cents, being part of revenue collections on 2nd September, 1969, the property of the Royal Malaysia Police, committed criminal breach of trust in respect of the said property and that you have thereby committed an offence punishable under section 409 of the Penal Code.

Third Charge:

That you between 2nd and 3rd October, 1969, at the District Police Headquarters, Ipoh, in the District of Kinta, in the State of Perak, being a public servant, namely, Acting Chief Clerk, in the office of the District Police Headquarters, Ipoh, and in such capacity being entrusted with certain property, to wit, cash $251.70 cents, being part of revenue collections on 2nd September, 1969, the property of the Royal Malaysia Police, committed criminal breach of trust in respect of the said property and that you have thereby committed an offence punishable under section 409 of the Penal Code."

After the close of the prosecution case the learned President of the Sessions Court decided not to call for the defence and acquitted and discharged the respondent. According to his statement of grounds of decision the reason for not calling for defence was that he held that the analysis cash books (marked for the purpose of identification as P2A, P2B and P2C respectively) are secondary evidence falling under section 63(b) of the Evidence Act since they are carbon copies and therefore inadmissible since no evidence had been adduced under section 65 to render them admissible. I hold that the carbon copies of the analysis cash books are not secondary evidence under section 63(b). I hold that they are primary evidence falling under section 62 (Explanation 2) of the Evidence Act, being documents made by one and the same uniform process as the top copies, and therefore they are admissible as primary evidence under section 62. By looking at the entries in the documents P2A, P2B and P2C one should have no doubt that they are carbon copies. They are entries made in the ordinary course of keeping account of revenue collection in a Government department, and they were made in books of printed forms, and therefore it can reasonably be inferred that each of the carbon copies was made by one and the same uniform process as the respective top copy. It would of course be ideal if the prosecution had produced the top copies instead of the carbon copies.

From his statement of grounds of decision it appears that the learned President did not find any other reason for not calling for the defence. But on behalf of the respondent it was submitted that there were other grounds why the defence should not be called. One of the grounds submitted by counsel for the respondent is that there is no evidence of loss to the Government of the sums stated in the charges and alleged to be entrusted to the respondent and therefore the prosecution has failed to prove misappropriation. I uphold the defence submission on this point. In many cases of criminal breach of trust of Government money, it would be impossible for the prosecution to produce an eye witness who can testify that he saw the accused putting the Government money into his pocket or in any other way misappropriating it or making use of it for his own purpose, simply because no officer entrusted with Government money would be so foolish as to do so in the presence of any person. Probably he would pretend to work in the office till late hours and after the rest of the office staff have left for home he would take away the money and leave the office

without anybody seeing him doing so. But where a Government officer has been entrusted with the keeping of Government revenue and it is discovered that the money entrusted to him is not to be found in the places in which he is authorised by the Government financial regulations or the departmental regulations to keep the money, this gives rise to an inference that he has misappropriated the money. Departmental regulations require revenue collectors to pay collections into the bank without delay and where it is not possible to pay late collections into the bank on the same day as the day on which they are received, the collectors are required to keep them locked in the departmental safe until the earliest time when it is possible to pay them into the bank. If the collections are not paid into the bank but kept in the departmental safe for some days or weeks, there is no breach of trust in respect of the collections because so long as they remain in the departmental safe they are still in the possession of the Government, although the responsible officer would be liable to serious departmental disciplinary action for the delay in paying into the bank. It is only when the money is removed from the safe or other authorised place otherwise than for the purpose of payment to the treasury or into the Government's account in the bank that it can be said that it has been taken out of the possession of the Government and there can be an inference that it has been misappropriated. The fact that only part of the collections for a particular day has been paid into the bank does not give rise to the inference that the balance has been misappropriated unless it is shown that the balance is not to be found in the safe and other authorised place.

It appears from the statement of the grounds of decision in the present case that the learned President found as a fact that the respondent kept revenue collections in the departmental safe of which he held the keys, but there is no evidence to show that the sums of money, the subject matter of the charges in this case, were missing from the safe. Probably there would not be difficulty for the prosecution to produce such evidence. According to the evidence in this case the accountant from Kuala Lumpur came to check the accounts some time in October, *i.e.* very soon after the dates of the alleged offences. I believe that normally when accountants or auditors carry out surprise check or routine inspection of accounts, one of the things they would do is to check the contents of the safe and record the amounts of money found in the safe and in the hands of the collectors. If the accountant in this case did so (there is reason to believe that he did so), by checking the amount which he found in the safe and in the hand of the collector against the amounts of collections recorded for the day of checking and the amount paid into the bank for that day, it can be found whether any sum was available in the safe to represent the short amounts in the account books. All that the prosecution would have to do in this case was to call the accountant to testify as to his finding as to the amount found in the safe, the amount paid into the bank, the amount recorded as collections and the amount in the hand of the collector, for the day of the checking.

I believe that in some Government departments books are kept in which records are made daily of the contents of the departmental safes, and at the end of each working day the cash to be kept in the safe for the night is counted by the head of the department or his deputy and he signs the entry in the record book to certify the amount of the cash kept in the safe at the end of each working day. If such a record book was kept at the respondent's office, it could have been produced by the prosecution to show the amounts kept in the safe on the dates stated in the charges.

In his statement of grounds of decision the learned President stated:

> "It might have been reasonable to infer from the set of facts elucidated there (i.e. the case of Johore Criminal Appeal No. 4/58 cited on behalf of the defence) that the money could be anywhere. On the facts of this case before the court now, I do not find it reasonable to make such inferences in view of the fact that the amount short paid equalled exactly the amount on the cheques."

From the mere fact that the amount short paid into the bank equalled exactly the amount on the cheque on each occasion I do not think it reasonable to infer that the short amount must have been taken possession of by the respondent, without evidence that the short amount was not to be found in other authorised places. Still there can be a possibility that the cheques were forgotten or inadvertently overlooked by the clerk (PW8) who made the entries of collections in exhibit P2A or by the respondent himself. On the other hand if there is evidence to show that the money representing the short amounts was not to be found in the safe, it would be reasonable to infer that the short amounts had been misappropriated by the officer entrusted with them and that the omission of the amounts of the cheques in the account book had been intentionally planned in order to hide the misappropriation.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Thevin, Chandran & Siva.*

JASBIR KAUR & ANOR. v. THARUMBER SINGH

[F.C. (Azmi L.P., Ong Hock Sim and Raja Azlan Shah F.JJ.) May 10, 1974]

[Kuala Lumpur — Federal Court Civil Appeal No. 46 of 1973]

Land Law — Unregistered transfer of land — Transfer made for love and affection — Transfer subsequently cancelled — Registration of transfer effected by fraud or misrepresentation — National Land Code, ss. 215 & 340.

In this case the respondent, the registered proprietor of certain lands, had executed a transfer of the lands to the first appellant as trustee for one Jagvinder Kaur, the daughter of the appellants. The documents of title were deposited with a firm of solicitors. Subsequently, the respondent decided to cancel the transfer and obtained the documents of title back from the solicitors. Later the second appellant obtained the transfer from the solicitors and by falsely declaring that the documents of title were lost, he was able to register the transfer. The respondent thereupon brought an action to have the registration of the transfer and the documents of title issued cancelled. Judgment was given for the respondent and the appellants appealed.

Held: (1) the memorandum of transfer executed by the respondent had not, until its registration, effectually transferred the land to the first appellant;